IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

FAMILY COURT APPEALNO.10 OF 2004

SHRI NITIN VISHWAS GADGIL ... APPELLANT.

VS.

MRS. NISHIGANDHA N. GADGIL ... RESPONDENT.

MR.SAGAR JOSHI I/B. S.M.OKA FOR THE APPELLANT.

NONE FOR THE RESPONDENT.

CORAM : J.N.PATEL & AMJAD A. SAYED, JJ.

DATE : June 13, 2007.

P.C.

1. Heard the learned Counsel for the appellant.

None for the Respondent.

2. The appellant has preferred this appeal against the Judgment and Order, dated 21st May, 2003 passed by the Family Court No.2, Pune in Petition A- No.101 of 2002.

3. The appellant -husband filed the petition under

Section 13(1)(i-b) of the Hindu Marriage Act seeking divorce against his wife.

4. It is not disputed that the parties got married at Sangli on 14.5.1996 and last resided at Pune. The appellant-husband was required to visit Tokyo, Japan, a foreign country for business purposes and the respondent was residing with her parents and was serving there. However, the appellant -husband could not take her to Tokyo, Japan. The Respondent was, at the relevant time, pregnant and she delivered a son on 17.2.1998 at Sangli, named Ninad, who is at present staying with the appellant-husband. It is the case of the appellant-husband that while he was required to visit foreign countries due to exigencies of his service, on his return to India, he used to reside with his family and on one occasion, he went to Australia and taken his wife and son alongwith him and stayed in Sydney from 13.9.99 to 23.9.1999 and, thereafter, returned to India and stayed at Pune up to 3.10.99. He again went to Australia and resided there from 4.10.99 to 25.10.99 and returned to India to attend the marriage of Respondent's brother at Sangli.

5. It is the case of the appellant-husband that the respondent was very much disturbed as the appellant

given up his job at Sydney as she was fascinated by the western life and desired that the appellant should get a job in foreign country. She wanted to enjoy the freedom from all responsibilities and bondages, including the responsibility of child Ninad. It is the case of the appellant that on 14.12.1999, the Respondent-wife abandoned the appellant-husband leaving the child Ninad, who was ultimately found at in Child Care Centre at Pune. Since then, neither the respondent-wife is traceable nor her whereabouts are known. Therefore, the appellant was left with no alternative but to approach this Court seeking divorce on the ground of cruelty and desertion.

6. The Family Court dismissed the petition of the appellant, inspite of taking cognizance of the fact, which was reflected in the report of the Counsellor that the respondent wife is not traceable.

7. The learned Judge of the Family Court took a technical view of the matter and came to a conclusion that the appellant-husband has not been able to prove the cruelty. In the view of the learned Judge of the Family Court abandoning the child and husband, by itself, could not lead to an inference of cruelty and further merely because the wife was missing or that

there were quarrels between them also cannot be a justification to grant relief of divorce on the ground of cruelty and desertion.

8. The learned Counsel appearing for the appellant- husband submitted that the whole approach of the Family Court is not correct and that the authorities cited in the impugned Judgment and Order by the Family Court do not come in the way of the appellant in seeking divorce. It is further submitted that the ratio in the said authorities has been wrongly applied to the facts of this case and therefore, the appeal deserves to be allowed.

9. During the pendency of this appeal before this Court, all attempts were made to serve the respondent wife including substitute service through publication but the whereabouts of the respondent-wife are not known. The learned Counsel appearing for the appellant- husband submitted that the appellant-husband contacted the parents-in-law i.e. the parents of the respondent-wife but they are also not able to give any clue about her whereabouts.

10. It is further submitted that the child Ninad is staying with the appellant-husband and under these

circumstance, the Court may allow the appeal. The learned Counsel for the appellant-husband has also placed reliance on the decision of the Apex Court in case of G.V.N.KAMESHWARRAO VS. G.JABILLI, reported in (2002) 2 SCC 296. It is submitted that the fact in the case supra, broadly tally with the facts of the present case and as the wife has deserted the appellant-husband and her whereabouts are not known, there was no reason for the Family Court to refuse the prayer for divorce, on both the counts i.e. cruelty and desertion.

11. Our attention is also drawn to a Certificate, issued by the Police Inspector, Yerwada Police Station on 2.5.2001, which is addressed to the father of the appellant as regards the whereabouts of their daughter-in-law that she has not been found yet and the search of the lady in the said missing file is continued.

12. Therefore, taking into consideration the fact that the wife has abandoned not only the appellant but also her minor child and that the whereabouts of the respondent-wife are not known inspite of all efforts being made to trace her out, we do not find any justification in denying to the appellant, the decree

of divorce, if not on the count of cruelty at least on the ground of desertion, as the whereabouts of the wife are not known for more than seven years. Therefore, the appeal deserves to be allowed. Hence, the Order :-

ORDER

The appeal is allowed.

It is declared that the marriage solemnised between the appellant and the respondent on 14.5.1996, stands dissolved by a decree of divorce.

Decree be drawn up accordingly with no order as to costs.

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[Amjad A.Sayed, J] [J.N.Patel, J.]